Science to take the entire charge of a child in a case of serious illness, to the exclusion of a regular physician, would the police power warrant the extension of such a provision to the case of adults in other than infectious diseases? Again, as the law stands to-day could the same result be reached in New York under § 193 of the Penal Code, which provides that culpable negligence is a cause of manslaughter, as was reached by Lord Coleridge in *Reg.* v. *Downes*, supra?

THE STATUTE OF FRAUDS AND THE SCOPE OF THE GENERAL DENIAL.—Two recent cases, allowing advantage to be taken of the Statute of Frauds under the general denial, are illustrative of the persistence of the influence of the precedents of common law pleading even under a reformed procedure. *Indiana Trust Co.* v. *Finnitzer* (Ind. 1903), 67 N. E. 520; *Rief* v. *Rube*, (Nebr. 103), 94 N. W. 517. The result reached seems unsound both in the scope given to the general denial and in the interpretation in effect put upon the Statute of Frauds. The original scope of the general issue was to traverse only the essential allegations of the declaration, which in actions of assumpsit were merely the essential elements of the formation of a contract. By arbitrary extension this plea later permitted the introduction of matter showing that such contract was void in law, owing to illegality, usury, coverture, etc., and also, purely personal defences which would render it merely voidable. The Hilary Rules and Judicature Acts remedied this vice by confining the plea to its logical office of a denial of the essential allegations of the declaration and reserving for special pleas all matter rendering the contract either void or voidable. There seems no valid reason for giving to the general denial, which under the reformed procedure has taken the place of the general issue, any more than this its logical effect. It is clearly improper, then, to allow the Statute of Frauds to be taken advantage of under this plea for, whatever else may be the effect of the Statute, it certainly does not make conformity with its provisions an element in the formation of the contract and so a necessary allegation of the declaration. If the oral agreement precedes the requisite writing the contract is treated as made on the earlier date both in law and equity. Following the Common Law rule and in disregard of these principles and of the seeming intention of the Hilary Rules, the defendant was allowed in *Buttemere* v. *Hayes* (1839) 5 M. & W. 456, to take advantage of the Statute under the general issue and this error was only remedied in England by the Judicature Acts. The influence of this decision seems largely reponsible for the result in the principal cases.

Even where improperly broadening the scope of the general denial, real defences are allowed thereunder, the Statute of Frauds cannot properly be raised, for the better view is that it is a personal and not a real defence. To be sure, in allowing a demurrer, where non-compliance with the Statute appeared upon the face

of the declaration, the pleadings seem to indicate that the contrary view was taken at common law, and there are some expressions in the cases to the same effect, *Reade* v. *Lamb* (1851), 6 Exch. 129; yet, so far as substantive law is concerned, there is nothing to indicate that it was a real defence. In fact, the cases seem to hold that it cannot be taken advantage of by interested third parties. *Dawson* v. *Ellis* (Eng. 1820), 1 J. & W. 524. So in the jurisdictions of the principal cases there seems to be the same inconsistency, for where the rights of a third party were concerned, the courts have treated the defence as purely personal. *Dixon* v. *Duke* (1882) 85 Ind. 434; *Rickards* v. *Cunningham* (1880) 10 Neb. 417. In England and in most American jurisdictions the pleadings are in the main brought into conformity with the substantive law in refusing to allow advantage to be taken of non compliance with the Statute under a general denial. *Crane* v. *Powell* (1893), 139 N. Y. 379; *Wolf* v. *Booker* (1901), 97 Ill. App. 139; *Smith* v. *Pritchett* (1893) 98 Ala. 649; *City* v. *Manufacturing Co.* (1893) 93 Tenn. 276. But even in some of these jurisdictions there is a trace of the influence of the common law pleading in the inconsistency of allowing the demurrer where the defect appears on the face of the complaint. Dictum in *Crane* v. *Powell*, supra; *Elliott* v. *Jenness* (1872), 111 Mass. 29; *Dicken* v. *McKinley* (1896) 163 Ill. 318; *Strouce* v. *Elting* (1895) 110 Ala. 132.

RIGHT OF A COMMON CARRIER TO INSIST UPON THE OBSERVANCE OF REGULATIONS.—It is well settled in the law of common carriers that a passenger must conform to the reasonable regulations of the carrier and if they are disobeyed the carrier is justified in ejecting one who so disobeys them. *Graville* v. *R. R.* (1887) 105 N. Y. 525; Hutch. on Carriers § 587 et seq. Such regulations, as for example that requiring the purchase of a ticket or the payment of excess fare, often present to the passenger alternatives, the second of which in effect imposes a penalty for a failure to accept the first. A difficult question arises when acceptance of the first alternative is rendered impossible through fault of an agent of the carrier. The question then is whether or not the passenger is justified in refusing to conform to the second alternative of the regulation and whether, if ejected, he may recover damages for such ejection. It is every where admitted that he may recover in contract or quasi-contract. Such a situation is most apt to arise under one of the three following situations—(*a*) where the regulation is that extra fare shall be paid if the passenger has no ticket and he is without a ticket because the ticket office was closed or through some other default of the carrier; or (*b*) where the regulation is that a passenger shall have a correct ticket or pay fare, and the agent issues a ticket the invalidity of which could not be discovered by reasonable examination on the part of the passenger; or (*c*) where the agent issues a ticket which is invalid on its face. In the third case there seems to be good ground for holding that the passenger